1952.

File No. Constitution II
52 (N)

Legal Deptt
B BRANCH

P. 15 (E)
1952

K

Subject:— Notifications under the

Constitution of India

File No. Constitution II/52 (N)

Gen. 194

148-B

Legal Department.

A revised form of notice to be given to Secretary, Legislative Assembly, of motion for vote on account is sent herewith. A form of recommendation order by H.E. the Governor is also enclosed. After obtaining H.M.F.D.'s signature on the notice, it may be sent to Secretary, Legislative Assembly, along with the recommendation order signed by Secretary, Finance Department and a draft of the proposed motion. As stated by Secretary, F.D., H.E.'s recommendation has ~~xx~~ already been obtained on the papers of this Department.

Id/- J.R.D.
22/1

Additional Secretary to Government.

U.R. to F.D., No. 91-Confl.
dated the 22nd January 1952.

JPE.29/6/56.
4 copies.

Bombay Castle, January 1952.

From

The Honourable Shri Vaikunth L. Mehta,
Ministry of Finance.

To

The Secretary to the Bombay Legislative Assembly,
Bombay.

Subject:- Motion for Vote on Account.

Sir,

I have the honour to state that I propose to move the appended motion for vote on account for the year 1952-53 under rule 130 E of the Bombay Legislative Assembly Rules in the current session of the Bombay Legislative Assembly on Friday the 25th January 1952. A copy of the Governor's recommendation under article 206 read with article 203(3) of the Constitution for consideration of the proposed motion for vote on account is attached.

Yours faithfully,

Minister for Finance.

JPE.29/6/56.4c.

Finance Department,

Bombay Castle, January 1952.

ORDER

No. .- In exercise of the powers conferred upon him by article 296 read with clause (3) of article 203 of the Constitution of India, the Governor of Bombay is pleased to recommend to the Bombay Legislative Assembly the consideration of the appended motion for vote on account for the year 1952-53.

By order of the Governor of Bombay

Sd/- ....

Secretary to the Government
of Bombay, Finance Department.

JPE.29/6/53.4c.

OFFICE OF THE R.L.A.

It appears that out of a certain sum received by the Government of India from the Government of the United Kingdom in connection with the exports of groundnuts to that country from India, the Government of India have created a fund called the 'Fund for the relief of Groundnut Cultivators' and for the administration of that Fund the Government of India have set up a Committee called the Indian Oilseeds Committee. Upon the recommendation of this Committee the Government of Bombay has been sanctioned a grant of loan of Rs. 1 lakh for the issue fo interest free loans to some co-operative societies or unions in the State. The question for the R.L.A.'s consideration is whether under clause (3) of article 293 of the Constitution the consent of the Goverhment of India is necessary before the Government of Bombay Accepts the above said loan of Rs. 1 lakh.

It would be sufficiently clear from the letter of the Government of India, Ministry of Agriculture, dated the 2nd February 1949 at page 147 of the D.D. File below that schemes relating to groundnuts are in the first instance scrutinised by the Indian Oilseeds Committee and that the Committee then approaches the Government of India for a grant from the groundnut fund. From the letter of the Sec retary of the Indian Central

Oilseeds....

Oilseeds Committee dated the 5th December 1950 at page 271 of the D.D. File, it is apparent that the loan of Rs. 1 lakh has been sanctioned out of the groundnut fund to the Bombay Government. Reading the two letters together, it would appear that the authority to sanction the grant of loan is the Government of India, If, as appears to be the case, the Government of India themselves have sanctioned the loan of Rs. 1 lakh to the Government of Bombay, no question of raising any laon within the meaning of clause (3) of article 293 arises. Consequantly the consent of the Government of India is not necessary in this case.

Id/- P.M.L.
11/2

Remembrancer of Legal Affairs.

U.R. to D.D. No. 2140,

dated the 11th February 1952.

JPE.29/6/56.
4 copies.

Legal Department.

If any statute provides for the making of any order by the State Government, it would be desirable to use the expression 'Dtate Government' or the expression 'the Government of Bombay' in the body of the order. 'State Government' has been defined in section 3(60) of the General Clauses Act, 1897, as meaning as respects anything done or to be done after the commencement of the Constitution, in a Part A State, the Governor. In view of this definition, which under section 4 of the General Clauses Act is applicable to all Indian Laws, the reference to 'State Government' or its equivalent 'the Government of Bombay' in any order made by the Government of Bombay under any statute shall mean the Governor of Bombay and, therefore, such shall be considered to have been an order made in the name of the Governor. Clause (1) of Article 166 of the Constitution, which provides that all executive actionof the Govt. of a State shall be expressed to be taken in the name of the Governor, corresponds to clause (1) of article 77. Although that article provides that all executive action of the Govt. of India shall be expressed to be taken in the name of the President the orders passed by the Central Govt. are expressed to have been made in the name of the Central Government. For instance, see order NO.SRO-41 dated 8th January 1952 passed by the Ministry of Works, Production and Supply. Presumably in making such orders

the.....

the Govt. of India rely on the definition of "Central Government" in section 3(8)(b) of the General Clauses Act. It is not, therefore, necessary to depart from the existing practice of using the expression "the Government of Bombay" in the body of an order made by the State Government under any statute.

Id/- J.R.D.
16/5

Additional Secretary to Government.

U.R. to H.D. No. 458-Secret,

dated the 16th May 1952.

JPE.29/6/56.
4 copies.

LEGAL DEPARTMENT.

The view expressed by Finance Department that the recommendation of the Governor under Article 203(3) will have to be obtained for demands for grants for 1952-1953 (for the full year) before they are put to the vote of the Assembly is correct.

A revised draft order in place of the draft Order at page 3 ante is sent herewith. All the demands may be specified in the Schedule to the Order. It is not necessaary to issue a separate order in respect of each demand. No such order in the case of Council is necessary (cf. Article 203(2). The view expressed by Secretary, Finance Department, in this behalf, is correct.

Id/- J.R.D.
30/6

Additional Secretary to Government.

U.R. &o F.D. No. 57-L,
dated the 30th June 1952.

JPE.29/ 6/56.
4 copies.

Finance Department,

Bombay Castle, 1

ORDER.

No. .- In exercise of the powers conferred upon him by clause (3) of article 203 of the Constitution of India, the Governor of Bombay is pleased to recommend to the Bombay Legislative Assembly the consideration of the demands for grants for the year 1952-1953, specified in the Schedule hereto annexed.

SCHEDULE.

By order of the Governor of Bombay,

Secretary to Government.

JPE.29/6/56.
4 copies.

Legal Department.

The opinion at page 7 ante was given in answer to the query which was raised whether it is necessary to include scheduled castes among backward classes. The draft at page 9/C as uncorrected is in order and can issue.

Id/- J.R.D.
2/7

Additional Secretary to Government.

U.R. to E.D., No. 211-L.,
dated the 23rd July 1952.

JPE.29/6/56.4c.

LEGAL DEPARTMENT.

A revised draft notification is sent herewith.

2. Since Article 235 of the Constitution is now being applied to the Presidency Magistrates and First Class Magistrates it would be necessary to make fresh rules under that Article regarding appointments of such Magistrates.

3. The view taken in paragraph 8 of the Home Department note is correct.

Sd/- J.R.Dhurandhar
Additional Secretary to Government.

U.R. to H.D., No. 18414/B,
dated the 5th November 1952.

JPE.29/6/56.
4 copies.

Legal Department.

The proposal is to adopt a revised procedure for pre enting demands for grants so that a demand for grant should be presented to the legislature in future for gross expenditure under each grant and not for the net expediture. It appears that the Government of India has already adopted the revised procedure in presenting their demands for grants for 1952-53 (vide p. 16 ante). There appears no legal objection for adoption of the same procedure by the State Government. As stated by the government of India (p.17 ante), the Constitutional provisions affecting the States in the matter contained in articles 202 to 207 are the same as in the case of the Union under articles 112 to 117. Article 202(1) requires that the Governor shall in respect of every financial year cause to be laid before the legislature a statement of the estimated receipts and expenditure of the State for the year. It will be seen that a distinction has been made in the Article between receipts and expenditure ~~xxxxx~~ and ~~they~~ they are to be shown separately. Article 203(2) lays down that so much of the estimates as relates to expenditure not charged on the Consolidated Fund shall be submitted in the form of demands for grants to the Legislative Assembly. The procedure for submission of such demands to the Assembly is laid down in rule 123 of the Bombay Legislative Assembly Rules.

Subrule....

Sub-rule(1) of the said rule 123 provides that a separate demand shall ordinarily be made in respect of the grant proposed for each department of Government. Sub-rule (2) provides that each demand shall contain first a statement of the total grant proposed and then a statement of the detailed estimates under each grant divided into items. The revised procedure of presenting gross expenditure is as stated above free from any constitutional objection and even if such procedure is adopted no amendment of the Bombay Legislative Assembly Rules will be necessary.

2. Rule 183 of the Rules of Procedure and Conduct of Business in the House of the People (published at p. 834 (1) of the Gazette of India, Extra-ordinary, Part I, Section 1, dated 17th April 1952), corresponds to rule 123 of th existing Bombay Legislative Assembly Rules or rule 123 of the draft Rules of the Bombay Legislative Assembly which are now under consideration. The wording of the rules for the House of the People and for the Bombay Legislative Assembly is similar and it does not appear that the Govt. of India specially amended the former rules when the revis ed procedure was adopted by them.

Id/- J.R.D.
31/12

Additional Secretary to Government.

U.R. to F.D. No. 22129/B,

dated the 31st December 1952.

JPE.29/6/56.4c.

LEGAL DEPARTMENT.

Two copies of the Adaptation of Laws (Fourth Amendment) Order, 1952 are retained in this Department.

2. In the case of Central Acts the practice followed by this Department is to republish all of them for the sake of maintaining continuity in the Bombay Government Gazette irrespective of their applicability to this State. P. & S.D. may therefore consider whether the Order in question (although it provides for the adaptation of the Madras Sales Tax Act) may not also be republished in the Bombay Government Gazettexx for the sake of maintaining continuity.

Id/- .....
10/9/52

Assistant Secretary to Government.

U.R. to P. & S.D. No. 14888-B,
dated the 11th September 1952.

JPE.29/6/56.
4 copies.

Office of the R.L.A.

Attention is invited to R.L.A's opinion No. 11278 dated 8th July 1952 (copy enclosed). As pointed out therein, Article 15(1) of the Constitution does not like Article 16(2) prohibit discrimination based among other grounds, on grounds of residence only. Therefore, restricting the concessions to persons who are ordinarily resident in the State of Bombay would not be unconstitutional. It may be added that by the term 'ordinarily resident' is meant such kind of residence as is part of the regular order of a man's life adopted voluntarily and for settled purposes. (Inland Revenue Commissioner v. Lysaght, 28 A.C. 234 at pp. 243-244). Although restriction on the basis of birth or domicile as such may not be permissible, restriction on the ground of ordinary residence would be legal, and, therefore, there would be no constitutional difficulty for rewarding open scholarship and freeships to students belonging to backward classes, whose families are ordinarily resident in the State of Bombay.

Id/- P.M.L.
28/8

Remembrancer of Legal Affairs.

U.R. to E.D. No. 14235,
dated 30th August 1952.

JPE.29/6/56.4c.